

SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-04-058495-129

DATE: November 7, 2013

BY: THE HONOURABLE CHANTAL CORRIVEAU, J.S.C.

N. K.
and
R. K.
Plaintiffs

v.
M. K.
and
K. E.
Defendants

JUDGMENT

[1] The Court is called upon to decide if it will grant Plaintiff N. K. (“**Mrs. K.**”) access rights to her granddaughter X.¹ Mrs. K. is the paternal grandmother of X who is now eight years old. X’s father is M. K. (“**Mr. K.**”) and her mother is K. E. (“**Ms. E.**”). The Court is also seized of a Motion for provisions for costs on behalf of Ms. E..

[2] Shortly after the birth of X, Ms. E. and Mr. K. separated. As of 2006, they pursued an ongoing custody battle regarding X. Custody was finally granted to Ms. E.

¹ The motion was originally instituted by R. K. as co-Plaintiff. Mr. K.’s motion was continued *sine die*.

on April 30, 2012² with access rights for Mr. K. every second week-end. Mr. K. did not contest the final motion, nor was he present.

- **Mrs. K.'s position**

[3] Throughout the years that Mr. K. was engaged in the custody litigation with regard to X, he was having serious alcohol and drug consumption problems. He underwent therapy with the financial support of his mother and has been sober of alcohol since 2011. In a letter addressed to his mother during his rehabilitation, Mr. K. acknowledges his mother's support.³

[4] Mrs. K. also supported her son financially throughout his custody battle. She claims that her son wanted to obtain custody of X and that she supported him by paying his lawyers' fees and being actively involved during the proceedings.

[5] Up until December 2011, Mrs. K. had regular access to her granddaughter, as her son, Mr. K., was living for the most part in her residence. Indeed, Mr. K. regularly exercised his access rights at his parents' home in the city of Limoges in Ontario.

[6] Up until an incident that took place in January 2012, Mrs. K. had a good relationship with her son.

[7] Mrs. K. believes to be the victim of a vendetta, her son having interrupted all contacts with her following a dispute that occurred in January 2012. Not only did Mrs. K. lose all contact with her son, Mr. K., but she also lost contact with her granddaughter X.

[8] Since this dispute in January 2012, Mrs. K. has also lost contact with her grandson, Mr. K.'s other child, named Y. He is currently two years old and was born from a different mother, Ka. R. ("**Ms. R.**").⁴

[9] In January 2012, Mr. K. was acting as general contractor in reconstructing Mrs. K.'s family home that had previously burned down. Mrs. K. disapproved of Mr. K.'s habit of smok. pot in the house while it was under construction, along with Ms. R. and other workers. At that point, Mrs. K. stated that she had given her son several warnings in this regard. In January 2012, having noted that pot consumption was continuing, Mrs. K. expelled Mr. K. and his workers from the construction site because of this unwarranted behaviour.

[10] Mrs. K. also stated that the cost of the construction had been increasing without justification and she did not trust her son in his capacity as a general contractor any longer.

² The judgment was filed as exhibit P-11.

³ Exhibit P-6.

⁴ Mrs. K. is also requesting access to Y in a Court file pending in Ontario where he lives.

[11] On the same day, exchanges between Mr. K., Ms. R. and Mrs. K. were very clear to the effect that from that moment on, Mr. K. and Ms. R. did not wish to be in contact with Mrs. K., and that the later would not see her grandchildren X and Y in the future.⁵

- **Mr. K.'s position**

[12] Mr. K. declares having become sober after his rehabilitation for alcohol issues that took place in the winter of 2011. Having been sober, save and except for two occasions, he believes that he has since then become conscious of certain issues he had with his mother, which may have affected his behavior.

[13] In the context of therapy sessions that followed his rehabilitation, Mr. K. confessed to one of the therapists that he had been sexually assaulted by his father when he was 12 years old. Following a complaint filed on June 17, 2012, Mr. R. K. was arrested and accusations under sections 151a), 152 and 271 of the Criminal Code were filed. Mr. R. K. will undergo his trial in April 2014. This explains why Mr. R. K. continued *sine die* the Motion for access on which he was originally co-Plaintiff.⁶

[14] In Mr. K.'s view, Mrs. K. did not react properly when he announced that he wanted to file a criminal complaint against his father. In his view, Mrs. K. chose to defend her husband when she should have defended her son.

[15] Mr. K. also claims that Mrs. K. was the underlying force in the custody battle for X that he had with Ms. E. throughout the years. He alleges that his mother manipulated him. He claims that in reality, she is the one who wanted to obtain X's custody and did everything she could to keep the child away from her mother.

- **Ms. E.'s position**

[16] Ms. E., the custodial parent, refuses that Mrs. K. should have any access rights or relationship with her daughter X. She claims that Mrs. K. denigrated her directly to X on numerous occasions, making comments such as "*You will soon be living with me in Ontario*". "*I will take you and we'll leave for Ghana*", being Mrs. K.'s native country and "*Your mother doesn't love you the way I love you.*"

[17] Ms. E. also blames Mrs. K. for having kept X in her home with Mr. K. when X was only six months old for a thirty-day period. It is only after a Court Order was issued that X was returned to her mother.

[18] Ms. E. clearly feels hatred against Mrs. K. because she deems the latter to be responsible for the endless litigation that took place between herself and X's father, Mr.

⁵ An email exchange with Ms. R. is produced as exhibit P-13.

⁶ In that context, Mrs. K. undertook before the Court not to exercise her access right to X in the presence of Mr. R. K., as long as the charges laid against will stand, should the Court give her access.

K., between 2006 and 2012. Ms. E. is also very angry at Mrs. K. for having caused X harm by making multiple negative and distressing comments regarding Ms. E.'s abilities as a mother.

LEGAL PRINCIPLES

[19] Article 611 of the Civil Code of Quebec is applicable in this instance:

In no case may the father or mother, without a grave reason, interfere with personal relations between the child and his grandparents.

Failing agreement between the parties, the terms and conditions of these relations are decided by the Court.

[20] The Court will first look at the presumption contained in article 611 C.C.Q. and decide if the refusal for relationship is based on a grave reason. When a conflict is predominantly at the root of the alleged grave reason, the Court will also take into account the best interest of the child in deciding whether or not some sort of access rights should be granted⁷. This approach was confirmed by the Court of Appeal in *Y.V. c. M.F. and C.S.*⁸

[21] According to jurisprudence where the Court ordered that measures be put in place to preserve the relationship between grandparents and grandchildren pursuant to article 611 C.C.Q., maintaining the relationship does not necessarily entail access rights.⁹ Indeed, the Court cannot analyse access requests by grandparents and access rights by parents in the same way.¹⁰

[22] In *M.T. c. AM.T*¹¹, the Court of Appeal held that because the conflict between the grandparents and the parents was too deep, maintaining access would put the child in the middle of negative family tension and cause him important disturbances. On this basis, the court denied access rights.¹²

[23] In some cases where there was a fundamental conflict between parents and grandparents, the Court nevertheless granted the grandparents access, but in a limited fashion.¹³

ANALYSIS

⁷ See the text : *L'application de l'article 611 C.c.Q. et des nouvelles dispositions de la Loi sur la Protection de la Jeunesse protègent-elles le droit de l'enfant ou celui des grands-parents?* Congrès du Barreau 2008.

⁸ 2010 QCCA 1706;

⁹ *C.B. c. F.A.*, [2004] R.D.F. 147 (C.S.).

¹⁰ *Droit de la famille - 2216*, [1995] R.D.F. 572 (C.S.).

¹¹ [2005] R.D.F. 762 (C.A.).

¹² In the following are cases, the Court considered that conflict between the parties constituted grave reason, *Droit de la famille - 1162*, 2011 QCCS 142; *Droit de la famille - 0092585*, 2009 QCCS 4815; *Droit de la famille - 091518*, 2009 QCCS 2913.

¹³ *D.S. c. J.P.* [2004] R.L. 369 (C.S.) and *Droit de la famille - 08142*, [2008] R.D.F. 378 (C.S.).

[24] In this case, both mother and father are opposed to access rights or the maintenance of any relationship between the paternal grandmother and their child, X. They are of the view that Mrs. K.'s behaviour towards them and X is so negative that it constitutes a grave reason to deny Mrs. K. any relationship.

[25] In the present context, are there grave reasons to foreclose Mrs. K. from having a relationship with her granddaughter? The conflict that has arisen between Mr. K., Ms. E. and Mrs. K. is excessively deep. The Court has reviewed all the evidence and does not accept all of Mr. K.'s testimony when he claims having been manipulated by his mother throughout the custody litigation. Although he was having problems with drug and alcohol consumption, the Court does not believe that this man was being manipulated for a period of six years over which the custody battle lasted.¹⁴ The Court believes that Mrs. K. was supporting her son in his desire to obtain custody of X.

[26] However, the Court also believes that Mrs. K. has been openly critical of Ms. E. in front of X. The evidence reveals that Mrs. K. filed a complaint at the Youth Protection Division ("YPD") against Ms. E.. During the summer of 2011, an investigation took place. The August 15, 2010 report confirms that X was exposed to hurtful comments by Mrs. K. toward Ms. E.:

X stated that her paternal grandmother often tells her "bad things" and a lot "of stuff" about her mother. When asked to elaborate she stated her grandmother told her that her mother was not nice, as she "makes your daddy cry" and that soon, "You won't be with your mommy anymore". She added that when her grandmother tells her these things, she is angry. X stated that she has asked her grandmother to stop saying these things, but that she continues to do this every time she visits. She added that this made her feel scared that she would not be able to stay with her mother.¹⁵

[27] When asked if her father (Mr. K.) ever made similar statements about her mother, X stated, "Yes, *but not as much*".

[28] In pursuing this investigation following the complaint, Ms. E. and X were visited by Marie-Hélène Landry a social worker in charge of this case of the YPD, on two occasions. Interviews were conducted with Ms. E., her mother and X. Communications by phone were also conducted with Mrs. K. and Mr. K.. At the outset of this investigation, the YPD decided that X's situation was not compromised. However, the report contains an alarming conclusion with regard to the YPD's view of the effect Mrs. K.'s behaviour had had on X:

However, the evaluation also revealed that X is exposed to several negative statements and/or comments made by her paternal grandmother, with whom she often resides with during her scheduled visits with her father. Ms. K. has continued indicating to X that she would soon be out of her mother's care, even

¹⁴ Exhibit P-12 and P-14 are good examples of Mr. K.'s personnel involvement.

¹⁵ Exhibit D-6, p. 3.

after X has asked her to stop. Furthermore, Ms. K. appears to be discussing custody issues with X, which is highly inappropriate and has negatively impacted X. It remains imperative that Mr. K. ensure that X is not exposed to this type of behaviour.¹⁶

[29] Mr. Brian Voekle (“**Mr. Voekle**”), Ms. Landry’s supervisor, came to testify in Court as Marie-Hélène Landry is currently on sick leave and therefore unavailable. Mr. Voekle did not conduct any of the interviews, but he did discuss this case throughout the investigation with Ms. Landry, he reviewed the draft report with her and he co-signed the final report. Mr. Voekle stated that comments reported in quotation marks in the report relate to words cited by the person to whom they are attributed.

[30] The comments in the report confirm statements made by X to her mother. They are the basis for Ms. E.’s adamant refusal for X to see and entertain any relationship with the paternal grandmother, Mrs. K.. The Court finds that this constitutes a grave reason within the scope of article 611 C.C.Q.

[31] Moreover, X is at the center of the conflict.

[32] The Court is of the opinion that ordering access between X and her grandmother, as requested by Mrs. K., would put the child in an excessively tense situation. There is no proof at this point that X, who is eight years old, wants to see her grandmother. In this case, one must not look at the interest of the grandmother to pursue this relationship, but whether it would be in the ultimate best interest of X herself.

[33] X is now a young girl who is growing up well and who has been recently enjoying two parents who are finally able to put aside their past disputes in order to communicate more freely and discuss her needs. They can now agree to access times with ease, whenever it is convenient for both parents. Mr. K. sees his daughter about three times a year, for a few days at a time, which seems to be sufficient for all the parties involved. X also seems happy about the end of the dispute between her parents.

[34] Faced with a very high conflict between the parents and the grandmother, the Court cannot be convinced that granting Mrs. K. access would be in X’s best interest.

[35] While the Court concludes that access for Mrs. K. would not be beneficial X, Mrs. K. should be able to send cards or gifts to X for her birthday and at Christmas in order to maintain some form of contact. These cards cannot contain any reference to Ms. E. or Mr. K..

MOTION FOR PROVISIONS FOR COSTS

¹⁶ *Id*, p. 6.

[36] Ms. E. has presented a Motion for provision for costs. She claims \$2,800 from Mrs. K. for what she feels is an abusive procedure, which comes at the end of a six-year long litigation.

[37] The Court acknowledges that Ms. E.'s means are limited. However, Mrs. K.'s revenues are also limited. Upon reviewing all the elements of the present case, the Court could not be convinced that Ms. E. was neither the sole nor the main instigator of the legal battle that occurred between Ms. E. and Mr. K. over the six-year period.

[38] Considering the abrupt ending of access by the grandmother to her granddaughter X since December 2011, the Court cannot not find that the present proceedings were abusive in any way.

[39] Therefore, the Court will not grant Ms. E.'s Motion for provision for costs.

THEREFORE, THE COURT:

[40] **DISMISSES** the motion for access rights;

[41] **GRANTS** permission to Mrs. K. to send on the occasion of X's birthday and at Christmas a card and a gift as long as the card does not contain any reference to Ms. K. E. or Mr. M. K.;

[42] **DISMISSES** Ms. K. E.'s Motion for provision for costs;

[43] **THE WHOLE** with costs again Mrs. N. K..

CHANTAL CORRIVEAU, J.S.C.

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Dates of hearing: October 29 and 30, 2013